IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 205 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KANTI @ KANTI DHARIYA HARIBHAIPALAIYA
Versus
STATE OF GUJARAT AND ANOTHER

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Appearance :
MR CHETAN B RAVAL for Applicant(s) : 1,
Mr. N.D. Gohil, Addl. PUBLIC PROSECUTOR for Respondent(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 20/07/2006

ORAL JUDGMENT

By filing this petition, the petitioner has challenged the order of externment dated 28.05.05 passed against him by the Deputy Commissioner of Police, Zone-3, Ahmedabad which is confirmed by the appellate authority by order dated 3.1.2006.

The petitioner was issued show cause notice dated 30.4.2004 by which he was asked to show cause as to why he should not be externed from Ahmedabad, Ahmedabad Rural, Gandhinagar, Kheda and Mehsana as it was found that the petitioner is a dangerous and high-handed person and is keeping arms with him, and is beating rickshaw drivers. Learned advocate for petitioner, Mr. Rawal, submitted that though reply to the show cause notice was given by the petitioner, since neither the show cause notice nor the reply is available, the same are not annexed. Mr. Rawal further submitted by filing reply to the show cause notice, the allegations in the show cause notice were denied.

Deputy Commissioner of Police, Zone-3, Ahmedabad thereafter passed an order dated 28.5.2005 under section 56(B) of the Bombay Police Act [hereinafter referred to as the Act] by which the petitioner was externed from the Police Commissionerate area of Ahmedabad and contiguous Districts, i.e. Ahmedabad, Gandhinagar, Kheda and Mehsana for a period of two years from the date of execution of the order. The said order was challenged by the petitioner by way of an appeal under section 60 of the Act before the State Government. The appeal was heard by the Under Secretary,

Home Department, and by order dated 03.1.2006, the appeal was dismissed. Being aggrieved thereby, the petitioner has preferred this petition under Article 226 of the Constitution of India.

Mr. Rawal, learned advocate for the petitioner submitted that show cause notice was issued to the petitioner on 30.04.04. Thereafter the petitioner had examined four witnesses and on behalf of the Department eight witnesses were examined. Thereafter, written submissions were given on 14.10.2004. It is submitted by Mr. Rawal that thereafter the order was required to be passed by the authority within a reasonable time. However, the order was passed only on 28th May 2005. It is submitted that there is delay of nearly seven months in passing the impugned order after conclusion of arguments on behalf of the petitioner. He further submitted that if the authorities were satisfied that the petitioner was required to be externed on account of his alleged activities, there should not have been so much delay, and the delay vitiates the externment order.

In support of his arguments, learned advocate for the petitioner has relied upon the judgment of a Division Bench of this Court in the case of Santosh Ramprasad vs. Dy. Commissioner of Police reported in 1992 Cr. L.R. (Guj.) 360. In the aforesaid case, there was a delay of nearly four months in passing the externment order subsequent to the arguments. In paragraph 9 of the judgment, the Division Bench has held as under:-

“In the present case, the arguments were

> submitted by the externee on 4.4.1991 and therefore, the proceedings were concluded on that day and the Externing Authority has passed the order only on 21.8.1991 i.e. after the delay of four months. No affidavit is filed to explain the delay caused in passing the order. Nothing is shown by the learned Addl. Public Prosecutor from the record to explain the delay on the part of the Externing Authority in passing the impugned order. It is true that mere delay in passing externment order cannot be fatal to quash such an order, but in our opinion, the delay must be explained. In the present case, there is delay of nearly four months in passing the externment order subsequent to the submission of the explanation and the arguments by the petitioner herein and there is no explanation coming forth in any form. Therefore, in our opinion, the delay in the present case will vitiate the externment order passed by the authority concerned. The preventive action should be taken immediately and any inordinate delay will definitely vitiate such an action taken as a preventive measure. Similar view is taken by this High Court in the case of Chothmal Sagansingh Rajput vs.State of Gujarat and others reported in 30(1) GLR 63".

So far as the facts of the present case is concerned, as pointed out earlier, after submission of written arguments and submission of the externee on 14.10.2004, the order of externment was passed on 28.05.05 i.e. after 7 months. By amending the petition, it is contended that the order of externment is required to be quashed in view of the delay in passing the same.

On behalf of the respondents, no reply is filed controverting this aspect. In a case where there is inordinate

delay of about 7 months, the authorities are expected to file their reply justifying the delay. Mr. N.D. Gohil, learned Additional Public Prosecutor however submitted that the original file is available with him. Even after going through the file, he has frankly admitted that the written submissions were given by the externee on 14.10.2004 and before that the externee examined four witnesses and department examined eight witnesses and after 14.10.2005, nothing further was required to be done by the externee. He further submitted that it is not possible to give any plausible explanation for delay in passing the order.

Considering the facts of the present case, it is clear that after 14.10.2004, except passing the order, nothing further was required to be done. Since the authority is not in a position to explain as to why there is a delay in passing the order, the order of externment is required to be quashed and set aside on the ground of unexplained delay in passing the final order.

It is required to be noted that in a given case if the externee is responsible or contributory to the delay by asking frequent adjournments or examining witness one after another, or the like, then in such cases the authority cannot be fastened with the responsibility for the delay in passing the order. However, in the present case, the externee submitted his written submissions on 14.10.04 and prior thereto the examination of witness on behalf of the externee as well as the department were over. In the circumstances, the externee is not in any manner contributory to the delay in passing the order. On the contrary, after the proceedings were concluded on 14.10.04, the externing authority is solely responsible for

the delay in passing the order. It is also interesting to note that eventhogh the authority took seven months to pass the order, the externee is asked to leave within two days. When the authority itself took more than 7 months in passing the order, there is, in fact, no meaning in asking the externee to leave within two days. That apart, considering the aspect of delay which is not explained, and which is even not possible to be explained, and since there is nothing on record that the externee is in any manner instrumental for the delay after conclusion of the arguments, this petition is required to be allowed. Even though law is laid down by this Court in this regard since long, the authorities have preferred not to take due care in passing the order timely.

Considering the aforesaid aspect of the matter, the order of externment dated 28.05.05 and the order dated 03.01.06 passed by the appellate authority are quashed and set aside.

Rule is made absolute accordingly.

Direct Service is permitted.

[P. B. MAJMUDAR, J.]

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